

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8086 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KISHORE CHETANDAS LALWANI

Versus

STATE OF GUJARAT

Appearance:

MR YN OZA for Petitioner

MR ND GOHIL ASSTT GOVT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 18/02/99

ORAL JUDGEMENT

#. The petitioner in this petition under Article 226 of the Constitution of India has challenged the detention order dated 11-7-1998 passed by the detaining authority viz. the Police Commissioner, Ahmedabad City under Section 3(2) of the Prevention of Anti Social Activities Act (for short 'PASA') and has prayed for immediate release from illegal detention.

#. The grounds of detention reveal that one case under Bombay Prohibition Act was registered against the petitioner. Besides this, three confidential witnesses gave statements against the petitioner. There is also reference of the C.R. No.252/98 under various Sections of the IPC. On the aforesaid material the detaining authority was subjectively satisfied that the petitioner is bootlegger and his activities were prejudicial for maintenance of public order. Accordingly, the impugned order of the detention was passed. The said order is under challenge in this petition on the sole ground that the activities of the petitioner were not prejudicial for maintenance of public order.

#. The subjective satisfaction of the detaining authority that the petitioner is bootlegger was not challenged before me. In view of the registration of a case under Bombay Prohibition Act and the statements of the two confidential witnesses who narrated about the incidents dated 5-7-98 and 2-7-98 can safely be pressed in service for inferring that the petitioner is a bootlegger and is involved in bootlegging activities.

#. However, engagement of a person in bootlegging activities does not amount to activities prejudicial for maintenance of public order. I am unable to agree with the contention of the learned AGP that mere engagement in bootlegging activities is prejudicial for maintenance of public order. Section 3(4) of the PASA provides that unless the activities are found to be prejudicial for maintenance of public order, no order for prevention under PASA can be passed. For seeing whether the activities of the petitioner were prejudicial for maintenance of public order, the grounds of detention have to be examined.

#. The first material is mention of CR No.252/98 interalia under Section 143 etc of IPC. This case has nothing do with the bootlegging activities of the petitioner. If the offence was registered not on account of the bootlegging activities of the petitioner, it cannot be considered for holding that the activities of the petitioner were prejudicial for maintenance of public order.

#. The next material is registration of single case under Bombay Prohibition Act but no details of the case are given from which it can be said that at that time the petitioner created a situation which was prejudicial for maintenance of public order. Thus, registered offence under the Bombay Prohibition Act is also insufficient for

coming to the conclusion that the activities of the petitioner were prejudicial for maintenance of public order.

#. Now remains the statement of three confidential witnesses. The first witness has stated that the petitioner came to his house with stock of liquor to be kept in his house but on his refusal, the petitioner got excited and shouted in abusive language and started beating him. The witnesses collected, seeing their presence the petitioner became more excited and rushed towards those persons with open knife. No injury was caused either to the witness or to the persons who collected at the spot and as such even within the extended meaning of public order as contained in Explanation to Section (3)(4) of PASA, these activities cannot be said to be prejudicial for maintenance of public order.

#. The second confidential witness stated about the incident dated 2nd July, 1998, when he refused to supply his vehicle to the petitioner for transporting the liquor. The refusal of the witness to supply the vehicle excited the petitioner and he started beating the witness. Upon alarm of the witness, persons collected from the surrounding area, whereupon the petitioner rushed towards them with a view to kill them. This is also ornamental narration of events by the witnesses. No injury was caused to any member of the public nor there is any mention that the witness sustained injury. Consequently on such minor incident, the public order cannot be said to have been disturbed.

#. The third witness stated that he was abused and beaten by the petitioner on the suspicion that he was police informer. This incident also does amount to activities prejudicial for maintenance of public order.

##. Thus, there was no material before the detaining authority to reach subjective satisfaction that the activities of the petitioner were prejudicial for maintenance of public order. The detention order is therefore illegal and cannot be sustained.

##. The writ petition therefore succeeds and is allowed. The detention order dated 11th July, 1998 is quashed. The petitioner shall be released forthwith unless wanted in some other case.

Date : 18-2-1999

(D.C.Srivastava, J.)

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